

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY RANAIEFAR and U.S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, LA

*Docket No. 01-1469; Submitted on the Record;
Issued February 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that she sustained a recurrence of disability commencing July 6, 1998 causally related to her accepted employment injury; and (2) whether appellant sustained an emotional condition on July 6, 1998 causally related to factors of her federal employment.

The Office of Workers' Compensation Programs accepted appellant's August 27, 1996 occupational claim for an adjustment reaction arising out of her work-related duties. The factors which the Office found to be compensable factors of employment were: (1) appellant was threatened by a disgruntled employee on August 29, 1994 during a disciplinary discussion; and (2) on December 14, 1995 a manager's meeting was held where other supervisors were questioned regarding whether or not they had any problems with the supervisor, with whom appellant had problems. Appellant stopped work on December 3, 1997 and returned to modified duty on April 13, 1998. She stopped work again on July 6, 1998 and has not returned.

On September 1, 1998 appellant filed a claim alleging that on July 6, 1998 she sustained a recurrence of disability causally related to her August 27, 1996 work injury. She indicated that she was detailed to the personnel department from April 13 through July 3, 1998. She advised that she suffered constant headaches and depression while at work, that she was still under a physician's care and that her medication had changed. Appellant alleged new factors as contributing to her current condition, including a July 6, 1998 reaction to supervisor Adolph Ray, stress caused by frustration of having to deal with the Office and stress regarding her personal finances and insurance.

By decision dated January 12, 1999, the Office denied appellant's recurrence of disability claim, finding that the evidence failed to establish that the claimed recurrence was causally related to the accepted injury. The Office further found that the new factors of employment appellant alleged were not compensable factors of employment. Appellant requested reconsideration several times and submitted additional evidence. By decisions dated August 18,

1999, January 18, May 10 and October 19, 2000 and April 5, 2001, the Office denied modification of the January 12, 1999 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the medical evidence submitted did not constitute a rationalized medical opinion relating appellant's current condition to her accepted compensable injuries.

The Board finds that appellant has not established that she sustained a recurrence of disability commencing July 6, 1998 causally related to her accepted employment injury.

Where an individual claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which she seeks compensation is causally related to the accepted employment injury.¹ As part of this burden, appellant must support her claim with rationalized medical evidence based upon a complete factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related injury.² An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's unsupported belief of causal relation.³ The question of whether there is a causal relationship is medical in nature and can be established only by medical evidence.⁴

Appellant alleged that her emotional condition was aggravated by Mr. Ray, a supervisor of the remote site to where she was detailed. Appellant contended that Mr. Ray was a product of the same environment in which her first stress claim occurred. Appellant related that on July 6, 1998 Mr. Ray stated that he had forgotten that she was coming to work that day. She stated that, upon entering Mr. Ray's office, he noted that he did not know what he was going to do with her. Appellant stated that she began reading a book. An acting supervisor entered and Mr. Ray introduced appellant to her. Appellant stated that she looked up and spoke and then looked back into her book. When the acting supervisor left, appellant stated that Mr. Ray said that she was an unfriendly person and that she needed to be more friendly to people. Appellant stated that she was not being unfriendly, that she was taking antidepressant medicine and that she was getting a headache.

In a December 7, 1998 letter, the Office advised appellant of the evidence necessary to establish that the claimed recurrence was causally related to the accepted injury. In an undated statement, appellant stated that she had been stressed for the prior five months in waiting to hear something from the Office pertaining to her case. She further advised that it was stressful not having an income or knowing how she would take care of herself or how she would pay her bills. Appellant related that she had changed her medication three times, was experiencing hair breakage and headaches. She further noted that it was stressful dealing with her private

¹ *Henry L. Kent*, 34 ECAB 361 (1982).

² *James L. Hays*, 36 ECAB 128 (1984).

³ *Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

insurance. Statements from appellant's sister and beautician were provided along with medical evidence.

The Office found that appellant alleged new factors as contributing to her current condition and work stoppage. This includes appellant's reaction to Mr. Ray, her reaction to dealing with this Office and her reaction to her personal finances and insurance. The Board finds that appellant has failed to establish that she sustained a new emotional condition on July 6, 1999 causally related to factors of her federal employment.

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁵ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Generally, speaking when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employment or has fear or anxiety regarding his ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁷ Conversely, if the employee's emotional reaction stems from employment matters, which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage

⁵ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Id.*

⁷ *Donna Faye Cardwell*, *supra* note 5; see also *Lillian Cutler*, 28 ECAB 125 (1976).

of the Act.⁸ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be “in the performance of duty.”⁹

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record. If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant’s emotional condition, then the medical evidence of record need not be considered.

In this case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

Appellant did not allege that she developed an emotional condition arising out of her regular or specially assigned duties, or out of specific requirements imposed by her employment. She alleged, in part, that her condition was caused by supervisory harassment. The Board has held that actions of an employee’s supervisor, which the employee characterizes as harassment, may constitute factors of employment giving rise to coverage under the Act.¹⁰ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹¹ In this case, appellant alleged that Mr. Ray forgot she was coming to work and told her that she was an unfriendly person and that God would change her. However, appellant did not provide evidence that any of these incidents occurred as alleged. The statements regarding appellant’s condition from her sister and her beautician are not probative, as neither appellant’s sister nor beautician were witnesses to the matter alleged. Moreover, even accepting the statements attributed to Mr. Ray, appellant has not demonstrated how such comments would constitute verbal abuse or harassment.¹² The Board finds that appellant has failed to submit sufficient evidence in support of her harassment allegations to establish that they occurred as alleged and notes that the employing establishment denied that

⁸ *Id.*

⁹ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

¹⁰ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹¹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹² See *Frank B. Gwozdz*, 50 ECAB 434 (1999).

any such harassment occurred. Accordingly, the Board finds that these allegations are not compensable factors of employment since appellant has not established a factual basis for them.

Appellant's additional allegations of stress arising from frustration from dealing with the Office and personal concerns over finance and insurance issues are not compensable factors of employment. These frustrations are of a personal nature and do not arise in or out of her employment or specially assigned duties.¹³

As appellant has failed to establish any new compensable factors of employment implicated in the development of her current emotional condition, she has failed to meet her burden of proof to establish a new emotional condition claim.

In support of the claimed recurrence of her accepted emotional condition claim, appellant submitted medical evidence.¹⁴

Work slips, medical reports and Form CA-20s from physicians advising that appellant should not return to her job due to her emotional and psychiatric condition along with recommendations that appellant change her job did not contain a discussion on how appellant's current condition is causally related to her employment factors. Accordingly, these are not sufficient to establish appellant's claimed recurrence of disability.

Multiple reports were submitted by M. Lauren Hair, a licensed social worker. Ms. Hair advised that although appellant remained compliant with her treatment, multiple personal stressors, including a drastic decrease in financial resources, have impeded appellant's progress. These reports, however, do not constitute probative medical evidence, as a licensed social worker is not a physician as defined under the Act.¹⁵

Multiple reports were also submitted by Dr. Moturu, a psychiatrist. In an August 24, 1999 report, he indicated that appellant was being treated for post-traumatic stress disorder with major depression and opined that her condition was related to the problems over the years appellant encountered at her place of employment. It is noted that the medical condition Dr. Moturu diagnosed has not been accepted by the Office as employment related. Moreover, he makes no mention of a work stoppage or a recurrence of disability on or about July 6, 1998. Dr. Moturu also does not provide any discussion of either the accepted factors of employment or the new factors of employment alleged in connection with the recurrence claim. Accordingly, Dr. Moturu's opinion is of diminished probative value as it is not based on a complete and accurate history of injury and fails to provide a rationalized medical opinion as to how the claimed recurrence is causally related to either the accepted employment factors or the new employment factors claimed. A February 7, 2000 report essentially duplicates the report of August 24, 1999 and, as it contains the same deficiencies, is of diminished probative value.

¹³ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

¹⁴ It is noted that appellant submitted nonmedical evidence. As this evidence had no bearing on the approved compensable factors or any new factors alleged, this evidence will not be discussed.

¹⁵ See *Frederick C. Smith*, 48 ECAB 132 (1996).

In a May 26, 2000 report, Dr. Moturu advised that appellant's condition is not recurrent but the same illness. He stated that the illness was a continuation that brought on a diagnosis of post-traumatic stress disorder and major depression. Dr. Moturu stated that the employing establishment had a negative impact on appellant's mental health that required treatment. He stated that the constant stress and anxiety appellant experienced over the years were significant factors that resulted in her depression. Dr. Moturu opined that appellant's condition was the result of her work environment and that appellant is unable to return to work due to flashbacks related to traumatic experiences in that environment. He, however, failed to identify the experiences appellant encountered which resulted in her depression. Absent that information, Dr. Moturu's opinion on causation is speculative, as it is not known whether he has a complete and accurate history of the accepted conditions or the new conditions appellant is claiming. Moreover, he failed to provide an explanation supported by medical rationale, which would relate appellant's current disability to the accepted employment factors. In a February 9, 2001 report, Dr. Moturu advised that appellant was being treated for depression secondary to post-traumatic stress disorder. Dr. Moturu opined that appellant remained at risk for a relapse into major depression should she return to work at the employing establishment. This report is of diminished probative value as it fails to provide an opinion regarding causation. In addition, Dr. Moturu's opinion that appellant is at risk of a relapse is without medical rationale or explanation.

Multidisciplinary treatment notes dated August 10 through 17, 1999, document appellant's progress but do not contain a discussion signed by a physician of the relationship between appellant's recurrent disability and her original disability. Accordingly, these treatment notes are insufficient to establish appellant's recurrence claim.

The Board notes that in her March 20, 2001 reconsideration request, appellant contended that her current condition was related to and a continuation of her original injury. Appellant alleged that she never recovered from the 1994 threat on her life by a coworker during the disciplinary hearing. However, review of the medical evidence fails to support that appellant's present treatment for her condition stems from this accepted incident.

The medical evidence appellant submitted in support of her recurrence of disability claim does not contain a physician's rationalized opinion supporting a causal relationship of her condition commencing July 6, 1998 with the factors accepted in her August 27, 1996 occupational claim. Therefore, she has failed to establish her recurrence claim. The evidence submitted is not sufficient to support that the new factors alleged are compensable factors of employment. As appellant has failed to establish any new compensable factors of employment implicated in the development of her current emotional condition, she has failed to meet her burden of proof to establish a new emotional condition claim.

The April 15, 2001, October 19 and May 10, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 25, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member